

ST 01-0044-PLR 10/12/2001 TELECOMMUNICATIONS EXCISE TAX

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code Part 495. (This is a PLR).

October 12, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of August 1, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

On behalf of Company, whose interests we are representing, we request that you affirm in a Private Letter Ruling that charges for an IX carrier's offering called SERVICE are excluded from Illinois' Telecommunications Excise Tax ('Tax') pursuant to 35 ILCS 630. A limited Power of Attorney is attached.

Capabilities and Purpose of SERVICE

SERVICE is used in conjunction with the carrier's 800 service. SERVICE provides the company the capability to do the following via computer:

- answer an incoming call
- greet the caller with an introductory greeting
- speak pre-recorded informational messages, and/or
- prompt the caller through a series of menu selections for the purposes of accessing information via spoken words or fax transmissions, routing the call, interfacing to voice mail, etc.

Technical Aspects

SERVICE is a computerized, interactive voice response¹ / voice messaging² service that provides interactive menu capability for audiotext³ and call routing options.

SERVICE requires interaction with a database. Database setup and software programming is required prior to implementation of the Service. (The carrier charges a one-time fee for providing assistance in database setup; however, the taxability of this one-time setup fee is not being questioned in this letter).

The charge for SERVICE is disaggregated (i.e., accounted for on a separate part of the invoice) from the actual transmission charges for the 800 calls that is associated with it. The charge for SERVICE is non-metered (i.e., it is a flat-rate, 'per call' feature charge), whereas the charge for transmissions is on a per-minute basis (i.e. varies based on elapsed time).

The following description of options (features) of SERVICE are from BBB. The cost to the Company for SERVICE is \$.06 per call, regardless of the number of times these options are used by the caller.

Menu Routing This option prompts callers to enter a single touchtone digit in response to voice prompts which are considered part of the menu routing option. The call then proceeds to another SERVICE function or is extended to its final destination.

Database Routing, Standard and Advanced This option prompts callers to enter touchtone digits in response to voice prompts. Using these digits, or using automatic number identification⁴ (ANI), the call is then extended to a customer location or to another SERVICE function as defined in the SERVICE database. The customer (Company) is responsible for providing the database in a specified content. This option also provides call routing capabilities based on a defined schedule or distributes calls randomly based on a specified percentage distribution between other SERVICE functions and/or multiple destinations. In addition, this feature includes the capability for callers to update the content of their SERVICE database via touchtone interaction.

Takeback and Transfer This option allows the called party to enter a touch-tone command, which places the caller on hold, and reroutes the call to another destination. As an option, while the caller is on hold, the first called party can speak with the second called party at the new destination before the caller is connected to the second called party.

Message Announcement This option plays prerecorded voice information referring callers to other numbers, explaining service conditions, or other information that a customer desires to provide to callers. The call may either terminate after the Message Announcement, or proceed to another SERVICE function, or extend to a final destination.

Busy/No Answer Rerouting This option monitors and reroutes unanswered calls to alternative customer locations or to another SERVICE function upon detection of busy or no answer conditions.

Announced Connect This option allows customized voice announcements or menu prompts to be provided to the terminating location before the caller is connected.

Relevant Citations

Pursuant to the Illinois Telecommunications Excise Tax Act gross charges shall not include 'charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content.' (35ILCS 630/2(a)(3)). The Illinois Administrative Code provides further clarification of this Section as follows:

'Charges for answering services, for example, whether provided electronically, or by live operators, represent charges for the storage of information of data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer.' 86 IL Admin Code 495.100(c).

SERVICE is Equivalent to an Electronic Answering Service

The capabilities, purpose, and function of the carrier's SERVICE offering are virtually identical to the basic functions of an answering service: answering the call, giving a voice greeting, providing basic information in the form of either a short unsolicited announcement or as an answer to the caller's question/request and if the caller desires, routing of the call to another destination.

Summary

SERVICE performs identical, or nearly identical, functions and serves a nearly identical purpose as an electronic answering service, which the Code specifically deems not subject to Tax. Also, the requirement that the service must be 'disaggregated and separately identified' from taxable charges is met as the SERVICE charge is separate from the charge for transmission and appears as a separate line item on the bill.

We ask that you confirm that the carrier's SERVICE should be excluded from gross charges for purposes of the Tax.

If you have any questions or need additional information, I can be reached at ##.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code Part 495, enclosed.

"Gross charge" is defined under Section 2 of the Telecommunications Excise Tax Act ("Act") as "the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money whether paid in money or otherwise...." However, "gross charges" does not include charges for the storage of data or information for subsequent retrieval or the processing of data or information intended to change its form or content. See, Section 2 (a)(3) of the Act. This exception has been further explained at 86 Ill. Adm. Code 495.100 (c).

As that regulation indicates, charges for answering services, whether provided electronically or by live operators, represent charges for the storage of information for subsequent retrieval, and are

thus not subject to tax. However, if these charges are provided in connection with taxable telecommunications, they must be disaggregated and separately identified in the books and records of the retailer. If not so disaggregated and identified, they are subject to tax.

Your letter presents a situation in which the taxpayer charges customers a flat rate fee per call for use of its answering service. The answering service is comprised of a telecommunications component. The client provides its customer with a 1-800 number which callers use to contact the answering service. The charges for the answering service are disaggregated from the actual transmission charges for the 1-800 calls that are associated with it.

In the situation you presented, the disaggregated charges for the SERVICE answering service are not charges for telecommunications subject to tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Melanie A. Jarvis
Associate Counsel

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¹ **'Interactive Voice Response (IVR)** is a technology that allows carriers to obtain requested information stored in a database. IVR technology uses the familiar telephone keypad as an information retrieval and data-gathering conduit. Recorded voice messages prompt and respond to the callers' inquiries or commands. Examples of IVR range from simply selecting announcements from a list of options stored in the computer, also known as **audiotext**, to more complex interactive exchanges such as querying a database for particular information.' (Nathan J. Muller, Desktop Encyclopedia of Telecommunications 212-213 (1998).)

² **Voice messaging**: 'Recording, storing, playing and distributing phone messages. Essentially **voice messaging** takes the benefits of voice mail (such as bulk messaging) beyond the immediate office to almost any phone destination you select. **Voice messaging** is often done through service bureaus... Nynex sees it as four distinct areas: 1. Voice Mail, where messages can be retrieved and played back at any time from a user's 'voice mail box'; 2. Call Answering, which routes calls made to a busy/no answer extension into a voice mailbox; 3. Call Processing, which lets callers route themselves among voice mailboxes via their touch-tone phones; and 4. Information Mailbox, which stores general recorded information for callers to hear.' (Harry Newton, Newton's Telecom Dictionary 935 (16th ed. 2000).)

³ **Audiotext**: 'A generic term for **interactive voice response** equipment and services. **Audiotext** is to voice what on-line data is to data terminals.' Harry Newton, Newton's Telecom Dictionary 79 (16th ed. 2000).) An example of an Octel system which incorporates **audiotext** technology is Information Center Mailboxes, a voice bulletin board on a voice mail system. 'Multiple users can access, directly or indirectly, recorded announcements containing information that would have otherwise been

given live by employees. One type of 'listen only' mailbox simply plays the messages to the callers. This technology, sometimes known as **audiotext**, makes it possible to create a verbal database so callers can select which information they want to hear. Another type of Information Center Mailbox prompts callers to reply to announcements. Callers wanting further information can be given the opportunity to leave their names and phone numbers after listening to a product description. They can also be transferred to a designated employee who can immediately take an order.' (Harry Newton, Newton's Telecom Dictionary 431 (16th ed. 2000).)

⁴ **Automatic Number Identification:** A service feature in which the directory number or equipment number of a calling station is automatically obtained. Note: ANI is used in message accounting. (American National Standard for Telecommunications -Telecom Glossary 2000. Available at <http://www.its.bldrdoc.gov/fs-1037/37search.htm>